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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

10 EVAN J. BRADLEY,

) CASE NO. 4:14-cv-02499-KAW

11 Plaintiff,

)
12 vs.
13 CROWLEY LINER SERVICE,
14 FIDELIO LIMITED PARTNERSHIP,
15 INC. and DOES 1-5, *in personam*, and
16 M/V RESOLVE, her engines, tackle,
apparel, furniture, and appurtenances, *in
rem*;
17 Defendants.

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) SEAMAN'S FIRST AMENDED
) COMPLAINT FOR PERSONAL
) INJURY - NEGLIGENCE
) UNDER THE JONES ACT;
) BREACH OF THE
) WARRANTY OF
) SEA WORTHINESS;
) MAINTENANCE AND CURE;
) AND UNEARNED WAGES
)
DEMAND FOR JURY TRIAL

[Pursuant to 28 U.S.C. §1916
Plaintiff is Entitled to File this
Complaint Without Prepayment
of Court Filing Fee]

I.

GENERAL ALLEGATIONS

1. Plaintiff EVAN J. BRADLEY ("Plaintiff") brings and maintains this
action based upon the General Maritime Law pursuant to the United States
Constitution Article III, Section 2, the Jones Act, 46 U.S.C. §30104, and 28 U.S.C.

1 §1333.

2 2. Plaintiff was at all times herein a seaman within the meaning of the
3 Jones Act and the General Maritime Law. As such, Plaintiff is entitled under the
4 provisions of 28 U.S.C. §1916 to bring this Complaint without prepayment of
5 court's filing fee or the posting of a bond.

6 3. Plaintiff is an American citizen. At all times herein mentioned,
7 Plaintiff has resided and continues to reside in Oakland, California, within the
8 Northern District of California.

9 4. At all times herein mentioned, M/V RESOLVE ("the Vessel") was
10 and is a United States flagged vessel afloat upon navigable waters of the United
11 States and/or the high seas. M/V RESOLVE is a pure car carrier with a hailing
12 port of Wilmington, Delaware. Plaintiff is informed and believes that M/V
13 RESOLVE is or will be within the Northern District of California at some time
14 during the pendency of this action.

15 5. Defendant CROWLEY LINER SERVICE is a business entity of
16 unknown form existing under the laws of a state other than California. Defendant
17 CROWLEY LINER SERVICE is licensed to do business and does business within
18 the State of California and the Northern District of California, and is subject to
19 personal jurisdiction in the Northern District of California.

20 6. At all times relevant, Defendant FIDELIO LIMITED
21 PARTNERSHIP, INC. ("FLP") was is a business entity of unknown form existing
22 under the laws of a state other than California. And was the legal owner of record
23 of M/V RESOLVE. Plaintiff is informed and believes that at the time of his
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1 employment aboard this Vessel, it was managed, crewed, maintained, controlled,
2 outfitted and navigated by one or all of Defendants, CROWLEY LINER
3 SERVICE, FLP and DOES 1-5, inclusive.

4 7. At all times relevant, Plaintiff was employed by Defendants to work
5 on the Vessel and had the legal status of a “seaman” within the meaning of the
6 Jones Act (46 U.S.C. §30104) and under the General Maritime Law.
7

8 8. Plaintiff is ignorant of the true names and capacities of the Defendants
9 sued herein as DOES 1 through 5, and therefore, Plaintiff sues these Defendants by
10 such fictitious names. Plaintiff will amend the Complaint to allege their true
11 names and capacities when ascertained. In the meantime, Plaintiff is informed and
12 believes that each of the fictitiously named Defendants is affiliated in one way or
13 another with Defendants CROWLEY LINER SERVICE and FLP and are
14 responsible in some manner for the occurrences herein alleged.
15

16 9. Plaintiff is informed and believes that all of the Defendants, including
17 those sued as DOES 1 through 5, were and are the agents, alter egos, partners, joint
18 venturers, co-conspirators, principals, shareholders, servants, employers,
19 employees of their co-Defendants, and in doing the things hereinafter mentioned,
20 were acting within the course and scope of their authority as such agents, alter
21 egos, partners, joint venturers, co-conspirators, principals, shareholders, servants,
22 employers, and employees with the permission, ratification or consent of their
23 co-Defendants and thus are legally liable for all of the damages resulting from the
24 acts or omissions of the others.
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26 10. On or about May 31, 2011, while Plaintiff was working in the course
27 and scope of his duties as the Bosun assigned to the Vessel, Plaintiff was ordered
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and required to lift an extremely heavy pilot ladder in an ergonomically unsafe work procedure which caused him to suffer a disabling spinal injury.

II.

FIRST CLAIM FOR RELIEF

**(For Jones Act Negligence Against Defendants CROWLEY LINER SERVICE
and DOES 1-5, inclusive)**

11. Plaintiff refers to and by that reference incorporates as though fully set forth herein each and every allegation contained in paragraphs 1 through 10, above.

12. Defendants CROWLEY LINER SERVICE and DOES 1-5, inclusive, owed Plaintiff a duty to use reasonable care in all aspects of the employment relationship between them and, among other things, to provide Plaintiff with a reasonably safe place to work.

13. Defendants CROWLEY LINER SERVICE and DOES 1-5, inclusive, breached this duty of care in a number of ways, including, but not limited to, the following:

(a) failing to institute and enforce safe lifting limits for their seamen aboard M/V RESOLVE in light of modern ergonomic science;

(b) requiring Plaintiff to lift, pull, heave, carry, drag and haul very heavy mooring lines, pilot ladders and other gear on and over the deck and rails of M/V RESOLVE, necessitating the use of forces well in excess of safe lifting and pulling limits;

1 (c) failing to perform proper job hazard analyses and to institute special
2 procedures for the handling of the heavy pilot ladder and other items aboard the
3 Vessel;

4 (d) failing to exercise ordinary care under the circumstances to have the
5 vessel's training, equipment and work methods in such a condition that Plaintiff
6 would be able to perform his duties with reasonable safety;

7 (e) failing to abide by safety laws, regulations, statutes and customs and
8 practice necessary for safety at sea with regard to the manual handling of heavy
9 loads and equipment;

10 (f) failing to provide adequate crew to perform the required tasks;

11 (g) failing to design a mechanical system for retrieval of pilot ladders and
12 other heavy gear which would obviate the need for seaman such as Plaintiff to
13 engage in ergonomically dangerous lifts; and

14 (h) failing to provide Plaintiff with a safe place to work.

15 14. As a result of the aforesaid negligent acts and omissions, among
16 others, Defendants CROWLEY LINER SERVICE and DOES 1-5, inclusive,
17 breached the duty of care they owed to Plaintiff.

18 15. As a legal result of such negligence on the part of Defendants
19 CROWLEY LINER SERVICE and DOES 1-5, inclusive, Plaintiff has sustained
20 physical and emotional injuries.

21 16. As a further legal result of the negligence of Defendants CROWLEY
22 LINER SERVICE and DOES 1-5, inclusive, Plaintiff has sustained and will
23 continue to sustain economic damages, including without limitation, past and

future medical expenses and past and future loss of earnings and benefits, all of which will be established at trial according to proof.

17. As a further legal result of the negligence of Defendants CROWLEY LINER SERVICE and DOES 1-5, inclusive, Plaintiff has incurred and will in the future incur non-economic damages, including physical and emotional pain and suffering, all of which will be established at trial according to proof.

III.

SECOND CLAIM FOR RELIEF

18. Plaintiff refers to and by that reference incorporates as though fully set forth herein each and every allegation contained in paragraphs 1 through 17, above.

19. At all times herein relevant, Plaintiff was acting in the service of M/V
RESOLVE performing duties of the type traditionally performed by a seaman and
whose presence was necessary for the operation of the Vessel.

20. By the provisions of the General Maritime Law of the United States, Defendants FLP and DOES 1-5, inclusive, by and through their agents, employees and servants, warranted to Plaintiff that M/V RESOLVE, and her decks, gear, passageways, equipment, appurtenances, tools, crew members, training, work methods and work environments were seaworthy and in compliance with applicable laws, statutes, standards and regulations enacted for the safety of the

1 crew.

2 21. As alleged herein, M/V RESOLVE, her decks, lines, gear,
3 passageways, equipment, appurtenances, tools, crew members, training, work
4 methods and work environments were not seaworthy and were not in compliance
5 with applicable laws, statutes, standards and regulations enacted for the safety of
6 the crew. Defendants FLP, DOES 1-5, and the RESOLVE inclusive, violated and
7 breached the warranty of seaworthiness owed Plaintiff in the following respects,
8 among others:

9 (a) failing to institute and enforce safe lifting limits for their seamen
10 aboard M/V RESOLVE in light of modern ergonomic science;

11 (b) requiring Plaintiff to lift, pull, heave, carry, drag and haul a very
12 heavy pilot ladder, lines and other equipment on and over the deck and rails of
13 M/V RESOLVE, necessitating the use of forces well in excess of safe lifting and
14 pulling limits;

15 (c) failing to perform proper job hazard analyses and to institute special
16 procedures for the handling of the heavy pilot ladder and other gear aboard the
17 Vessel;

18 (d) failing to exercise ordinary care under the circumstances to have the
19 vessel's training, equipment and work methods in such a condition that Plaintiff
20 would be able to perform his duties with reasonable safety;

21 (e) failing to abide by safety laws, regulations, statutes and customs and
22 practice necessary for safety at sea with regard to the manual handling of heavy
23 loads and equipment;

1 (f) failing to provide adequate crew to perform the required tasks;

2 (g) failing to design a mechanical system for retrieval of pilot ladders

3 which would obviate the need for seaman such as Plaintiff to engage in

4 ergonomically dangerous lifts; and

5 (h) failing to provide Plaintiff with a safe place to work.

6 22. As a legal result of these breaches, Plaintiff sustained physical and
7 emotional injuries.

8 23. As a further legal result of Defendants' breaches, Plaintiff has
9 sustained and will continue to sustain economic damages, including without
10 limitation, past and future medical expenses and past and future loss of earnings
11 and benefits, all of which will be established at trial according to proof. As a
12 further legal result of Defendants' breaches, Plaintiff has incurred and will in the
13 future incur non-economic damages, including physical and emotional pain and
14 suffering, all of which will be established at trial according to proof.

15 24. Plaintiff has and is asserting herein a maritime lien and an *in rem*
16 claim against M/V RESOLVE for all of the above described economic and non-
17 economic damages caused by the unseaworthiness of M/V RESOLVE.

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IV.

THIRD CLAIM FOR RELIEF

**(For Maintenance and Cure *In Personam* Against Defendants CROWLEY
LINER SERVICE, FLP and DOES 1-5, inclusive, and *In Rem* Against M/V
RESOLVE)**

25. Plaintiff refers to and by that reference incorporates as though fully set forth herein each and every allegation contained in paragraphs 1 through 24, above.

26. According to the General Maritime Law, when a seaman becomes ill or injured while in the service of a vessel, the employer is liable *in personam* and the Vessel itself is liable *in rem* to provide the seaman with all reasonable medical care (“cure”) and pay to the seaman a reasonable rate of daily financial maintenance sufficient to cover his room and board (“maintenance”) from the date of his illness or injury until he reaches “maximum cure.”

27. Plaintiff was discharged from M/V RESOLVE on or about June 10, 2011, due to his spinal injuries. Defendants CROWLEY LINER SERVICE, FLP and DOES 1-5, inclusive, *in personam*, and the Vessel itself *in rem* are legally required to furnish Plaintiff with all maintenance and cure to which he is entitled under the General Maritime Law for and during his curative treatments relating to these injuries.

28. Plaintiff is entitled to recover from Defendants any and all past maintenance and cure unpaid and owing at the time of trial.

29. Plaintiff also has and is asserting herein a maritime lien and an *in rem*

claim against M/V RESOLVE for all unpaid maintenance and cure.

V.

FOURTH CLAIM FOR RELIEF

**(For Unearned Wages *In Personam* Against Defendants CROWLEY LINER
SERVICE and *In Rem* Against M/V RESOLVE)**

30. Plaintiff refers to and by that reference incorporates as though fully set forth herein each and every allegation contained in paragraphs 1 through 29, above.

31. According to the General Maritime Law, when a seaman becomes ill or injured while in the service of a vessel and is discharged from the vessel for medical reasons, his employer is obligated to pay the employee's wages through the end of the voyage.

32. Plaintiff was hired to work aboard M/V RESOLVE beyond the date of his discharge, however, Plaintiff was only paid his wages through June 10, 2011, following his discharge for medical reasons. Therefore, Defendants CROWLEY LINER SERVICE and DOES 1-5, inclusive, *in personam*, and the Vessel itself *in rem* are legally required to pay Plaintiff his unearned wages through July 20, 2013.

33. Plaintiff also has and is asserting herein a maritime lien and an *in rem* claim against M/V RESOLVE for all unearned wages owed to him through planned date of discharge but for his injury.

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1 VI.
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34 **PRAAYER FOR RELIEF**
56 WHEREFORE, Plaintiff prays judgment against Defendants, and each of
7 them, as follows:
89 1. That process in due form of law, according to the practices of this
10 Honorable Court in causes of admiralty and maritime jurisprudence, may issue
11 against M/V RESOLVE, her engines, tackle, apparel, appurtenances, etc., and that
12 all persons having or claiming any interest therein be cited to appear and answer,
13 under oath, all and singular, the matters alleged herein; that Plaintiff have a
14 judgment for his damages aforesaid, with interest and costs; and that, if necessary,
15 M/V RESOLVE be arrested and sold to satisfy Plaintiff's judgment;16 2. That process in due form of law according to the practice of this
17 Honorable Court issue against the *in personam* Defendants, citing them to appear
18 and answer all and singular the matters aforesaid;19 3. That Plaintiff have judgment for his past and future economic damages
20 in amounts according to proof at trial;21 4. That Plaintiff may have judgment for his past and future non-economic
22 damages in amounts according to proof at trial;23 5. That Plaintiff be awarded prejudgment interest on the amounts of the
24 damages awarded;25 6. That Plaintiff be awarded any maintenance and cure unpaid and owing
26 at and through the time of trial in amounts necessary to make him whole according
27 to proof;
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7. That Plaintiff recover his unearned wages;
8. For costs of suit herein; and
9. For such other and further relief as this Honorable Court deems just and proper.

DATED: January 30, 2014 Respectfully submitted,

BRODSKY MICKLOW BULL & WEISS LLP

By: /S/ Edward M. Bull III
Edward M. Bull III

Attorneys for Plaintiff
EVAN J. BRADLEY

VII.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Respectfully submitted,

DATED: January 30, 2014 BRODSKY MICKLOW BULL & WEISS LLP

By: /S/ Edward M. Bull III
Edward M. Bull III

Attorneys for Plaintiff
EVAN J. BRADLEY